

REMARKS:

This paper is filed in response to the above captioned Requirement for Restriction/Election, along with a petition for an extension of time of four (4) months under 37 CFR 1.17(a)(4) and the authorization for the Office to deduct the requisite fees for such petition and fees associated with the this response from the Applicant Monsanto's Deposit Account 13-3125. Therefore, it is believed that this paper is timely filed.

The Applicant thanks the Examiner for introducing the claims filed in the international stage and for proceeding on the merits with the instant set of claims.

Claims Amendments

No amendments are introduced into the claims with this response.

The Restriction/Election Requirement

This is the second restriction requirement issued by the Office. The first restriction requirement of January 2010 was based upon an incorrect set of claims, the originally filed claims in the international application, which were subsequently amended to represent the current set of claims 1-24. The Examiner, in the first restriction requirement, divided the claims into *three* groups: Group I was drawn to claims allegedly reading on isolated DNA primers and methods of using, Group II was drawn to claims allegedly reading on a transformed maize plant, sub-combinations thereof, and methods of using, and Group III was drawn to a single claim allegedly reading on a method of determining the zygosity of the progeny corn of event MON88017. The Applicant previously traversed the first restriction requirement, and provisionally elected Group II, certain claims 5, 8, 10-20, 26, and 31-32 drawn to a transformed maize plant, sub-combinations thereof, and methods of using the same.

In this second restriction requirement, the Examiner has divided the claims into *four* groups, Group I certain claims 1-3, 15-16, and 19-21 drawn to a DNA probe, Group II certain claims 4, 6-7, and 17 drawn to methods of detecting a specific transformation event in corn, Group III only claim 8, drawn to a method of determining the zygosity of corn event MON88017, and finally Group IV certain claims 5, 9-14, 18, and 22-24 drawn to a corn plant comprising corn event MON88017 and sub-combinations thereof comprising said event

DNA.

The Examiner asserts in this second restriction requirement that the groups of inventions Group I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The method of GroupII does not require the special technical feature of Group III or IV which requires corn event MON88017, as the method of GroupII can be sued to determine the absence of corn event MON88017, and thus the Examiner argues, that the claims as a whole lack the same special technical feature.

The applicant respectfully traverses this requirement. It is believed that the Examiner is asserting a failure of the claims to exhibit any unity of invention because a rejection or objection based on the lack of unity of invention would assert that the claims as a whole lack the same special technical feature that is the foundation of the unity of invention requirement.

First, the claims presented now are the same claims that were presented under the PCT phase and which were subjected to examination in the PCT phase, and were not determined under the PCT phase to have failed unity of invention, and so it is believed that it is now improper for the USPTO to now assert that the same claims now lack unity. The substitute claims entered into the PCT phase, that are now being examined in this application, are substantially the same as the claims that were originally filed and which also did not fail the test of unity of invention. Therefore, it is respectfully requested that the Examiner remove this grounds of objection and find that the claims as presented exhibit unity and each rely on a common special technical feature.

The instant set of 24 claims is substantially the same as the previous set of 32. The set of 24 claims was introduced during the PCT phase of the application as substitute claims in response to the Search Report and Written Opinion, and the substitute claims correspond to the originally presented claims and are believed not to extend beyond the scope of the claims as originally presented. The substitute claims are believed to be directly and unambiguously supported by the specification as filed, and were submitted in order to obviate issues observed and noted in the PCT Search Report and Written Opinion during the PCT examination phase. No unity of invention issues were observed in the PCT phase. In fact, all of the claims were observed to exhibit unity of invention because there was no failure of unity of invention referred to in the PCT Examination Phase. It is believed to be improper for the Examiner in this case to now cite lack of unity. It is respectfully requested that the Examiner remove this

grounds of objection.

Each claim is dependent either on an embodiment unique to the MON88017 event, a particular segment of DNA that is uniquely present in the MON88017 event genome, or with reference to method claims, the detection of the presence of a segment of polynucleotide unique to the MON88017 event genome as set forth in SEQ ID NO:1 and/or SEQ ID NO:2 (or significant parts or complete complements thereof) when detected in or present in corn genomic DNA corresponding to corn event MON88017 as to form a single genomic DNA. In other words the special technical feature linking the different aspects of the application are the presence of the sequences of SEQ ID NOs: 1 and/or 2 (or at least 16 contiguous nucleotides thereof or complete complements thereof) in the sequences to be detected or the presence in or its use to detect the presence of these particular nucleotides, which detection is thus diagnostic for the presence of the corn event MON88017. The feature "at least 16 contiguous nucleotides" of SEQ ID NOs: 1 and 2 is novel over the art or is detected in or present in corn genomic DNA corresponding to corn event MON88017, and represents the linking technical feature. Thus, because the claims all unite under this special technical feature, it is believed that the claims all correspond to a single general inventive concept and should all be examined together, which would not result in a serious search and examination burden, searching for the presence of the two sequences SEQ ID NO 1 and 2 in corn genomic DNA. Only the detection of the sequence set forth at SEQ ID NO 1 or 2 or the complements thereof in corn event MON88017 genomic DNA is diagnostic for the presence of this particular event DNA in any particular biological sample containing corn genomic DNA. For these reasons, the special technical feature that binds all of the claims together are the two short segments of DNA referred to as SEQ ID NO:1 and SEQ ID NO:2, or longer segments such as amplicons produced from any particular biological sample containing corn DNA using various primers directed to amplification of the segments of DNA from the corn event MON88017 genome that would then contain these two short segments, the detection of which would then be diagnostic for the presence of the corn event MON88017 in such sample. Thus it is believed that all of the claims are united in inventive concept due to this particular special technical feature and should then all be examined together.

In the event that the Examiner maintains the restriction requirement, the Applicant specifically reserves its right to appeal the decision, and specifically requests rejoinder of the

claims not elected to the extent that such claims related to the subject matter of the elected claims at the time subject matter is determined to be allowed or allowable.

The Applicant provisionally elects Group IV, claims 5, 9-14, 18, and 22-24 drawn to a corn plant comprising corn event MON88017 and sub-combinations thereof comprising said event DNA.

It is respectfully requested that the Examiner find that the claims meet the unity of invention requirements under PCT Rule 13.1 and 13.2, that the claims should all be examined together, and find that the claims are now in condition for allowance.

It is therefore believed that the Applicant has fully complied with the requirement to reply to the Restriction/Election requirement. It is respectfully requested that the Office enter the documents provided herewith into the record and submit the application to substantive examination at the earliest opportunity.

Respectfully submitted,

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/ Timothy K. Ball, USPTO Reg. No. 42,287/

Date: _____

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